

Message Text

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ACTION TRSE-00

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R 231350Z APR 76

FM AMEMBASSY PANAMA

TO SECSTATE WASHDC 7485

INFO PANCANAL

USCINCSO

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E.O. 11652: N/A

TAGS: EFIN, PN

SUBJECT: REPORT TO CONGRESS ON SIGNIFICANT US GOVERNMENT CLAIMS
AGAINST FOREIGN GOVERNMENTS - PANAMA

REF: STATE A-2021

SUMMARY: REVIEW OF EMBASSY RECORDS AND CHECK WITH OTHER USG AGENCIES ON ISTHMUS DISCLOSE NO OUTSTANDING MATTERS WHICH ARE PROPERLY CLASSIFIABLE AS CLAIMS OF USG AGAINST GOP. THERE ARE, HOWEVER, THREE MATTERS WHICH ARE DISCUSSED IN DETAIL BELOW FOR COMPLETENESS OF RECORD AND TO PROVIDE BACKGROUND INFORMATION SHOULD CONG. BROOKS OR HIS COMMITTEE INQUIRE ABOUT THEM. ONE OF THESE INVOLVES POTENTIAL CLAIM WHICH HAS NEVER BEEN ASSERTED BY THE USG AND WHICH AS A MATTER OF POLICY SHOULD NOT BE, AND TWO INVOLVE WHAT APPEAR TO BE BAD DEBTS, RATHER THAN CLAIMS, FOR SERVICES PROVIDED BY PANAMA CANAL COMPANY/CANAL ZONE GOVERNMENT TO GOP. END SUMMARY.

1. REIMBURSEMENT FOR COSTS OF US MILITARY GROUP PANAMA: AGREEMENT RELATING TO PRESENCE OF US MILITARY GROUP IN PANAMA ORIGINALLY PROVIDED FOR REIMBURSEMENT BY GOP OF CERTAIN COSTS TO US MILITARY ADVISERS. AGREEMENT WAS AMENDED BY EXCHANGE OF NOTES IN 1959 PROVIDING FOR PAYMENT TO USG,
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RATHER THAN TO INDIVIDUAL MILITARY MISSION MEMBERS, IN

AN AMOUNT BASED ON COST OF LIVING AND REPRESENTATION ALLOWANCES ORIGINALLY PAID MISSION MEMBERS, COSTS OF TRANSPORTATION OF MEMBERS AND DEPENDENTS TO AND FROM PANAMA AND COSTS OF LOCAL OFFICIAL TRAVEL. SUBSEQUENT DEVELOPMENT OF THIS ASPECT OF AGREEMENT DISCUSSED IN DETAIL IN USMILGROUP-SECDEF MESSAGE 131652Z DECEMBER 1972, SENT INFO SECSTATE. FROM REVIEW OF EXTANT RECORDS, IT WOULD APPEAR THAT US HAS SOUGHT TO BILL GOP FOR SUCH COSTS ONLY ONCE, IN 1967--GOP RESPONSE WAS A REQUEST FOR CLARIFICATION OF PORTIONS OF AGREEMENT ON WHICH BILLING WAS BASED, AND THIS WAS APPARENTLY NEVER ANSWERED. AGGREGATE COSTS INCURRED BY USG SINCE 1959 ARE UNDETERMINED BUT UNDOUBTEDLY IN EXCESS OF \$500,000. HOWEVER, AS DISCUSSED IN USMILGP-SECDEF MESSAGE 111430Z AUGUST 1975 AND OTHERS, SENT INFO SECSTATE, THERE IS NOW GENERAL REALIZATION THAT EXISTING AGREEMENT IS SUBSTANTIALLY OUT OF DATE AND OVERDUE FOR REVISION. IN RECENT YEARS, USG HAS REFRAINED FROM ASSERTING CLAIM FOR AMOUNTS WHICH MIGHT HYPOTHETICALLY BE DUE IT AS A MATTER OF POLICY, BASED ON VIEW THAT PROVISION OF ADVICE AND ASSISTANCE TO GOP MILITARY BY US IS IN US INTEREST. EMBASSY CONSIDERS THAT NOTHING HAS HAPPANED TO CHANGE, AND MUCH EXISTS TO REINFORCE, OUR POSITION OF SIMPLY IGNORING THIS POTENTIAL CLAIM AS A MATTER OF POLICY. EMBASSY DEFERS TO DEPARTMENT LEGAL ADVISER AS TO WHETHER SUCH UNASSERTED LIABILITY OF UNDEFINED AMOUNT CONSTITUTES A "CLAIM" REPORTABLE TO CONGRESS WITHIN MEANING AND INTENT SUMMARIZED REFAIRGRAM.

2. PANAMA CANAL COMPANY/CANAL ZONE GOVERNMENT: AS DEPARTMENT AND INTERESTED CONGRESSIONAL COMMITTEES ARE AWARE, PCC/CZG CURRENTLY CARRIES ON ITS BOOKS AN ITEM FOR "OUTSTANDING ACCOUNTS RECEIVABLE - PANAMA GOVERNMENT", WHICH THROUGH MARCH 1976 HAS ATTAINED AN AGGREGATE TOTAL AMOUNT OF \$7,730,942.77. THIS SUM IS SOMETIMES REFERRED TO AS "DEBT" OR MONEY "OWED" BY GOP, AND SOMETIMES AS "CLAIM" BY PCC/CZG AGAINST GOP, IN POPULAR PARLANCE. DETAILED PCC/CZG REPORT ON THIS ITEM AVAILABLE FROM ARA/PAN. THIS AMOUNT IN TOTO IS CLEARLY NOT A "CLAIM" AS DEFINED REFAIRGRAM, SINCE IT INCLUDES LIMITED OFFICIAL USE

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ACCOUNTS RECEIVABLE FOR GOODS OR SERVICES PROVIDED IN RECENT MONTHS WHICH PCC/CZG HAS EVERY EXPECTATION WILL BE PAID BY GOP. TOTAL ALSO INCLUDES A NUMBER OF OTHER SEPARATE ITEMS FOR SPECIFIED TYPES OF GOODS OR SERVICES APPLYING TO INDIVIDUAL YEARS BACK TO 1959, MOST OF WHICH FALL BELOW AGGREGATE FIGURE OF \$500,000; THUS, EVEN IF ANALYSIS SHOWED THEM TO BE CLAIMS RATHER THAN BAD DEBTS, THEY WOULD NOT BE CLASSED AS "SIGNIFICANT." LEAVING

ASIDE CONSIDERATION OF ACCOUNTS RECEIVABLE WHICH PANCANAL EXPECTS TO BE PAID, AND ITEMS FOR WHICH AMOUNTS BILLED SINCE 1959 AGGREGATE LESS THAN \$500,000, TWO ITEMS REMAIN. BASED ON DETAILS PROVIDED BELOW, EMBASSY TENTATIVE OPINION IS THAT THESE ARE PROBABLY BAD DEBTS RATHER THAN CLAIMS. GIVEN CONGRESSIONAL FAMILIARITY WITH GOP DEBT TO PANCANAL, HOWEVER, IT IS POSSIBLE THAT THESE ITEMS MAY BE RAISED BY CONGRESS IN CONTEXT OF CLAIMS DISCUSSION, AND DETAIL PROVIDED BELOW SHOULD ASSIST IN PROVIDING APPROPRIATE DEFINITION OF AMOUNTS IN QUESTION.

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TO SECSTATE WASHDC 7493

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A. 1959-60 WATER PROCESSING COSTS: FOR NUMBER OF YEARS, PANCANAL PROVIDED POTABLE WATER TO GOP AND WAS REIMBURSED FOR PROCESSING COSTS BY GOP. APPARENTLY AS A RESULT OF POLITICAL DIFFICULTIES IN LATE 1950'S, AND ALSO AS CONSEQUENCE OF INCREASE BY PANCANAL IN RATE CHARGED, GOP CEASED PAYING AMOUNTS FOR WHICH IT WAS BILLED UNDER THIS HEADING. IN APRIL 1960, PRESIDENT OF US APPROVED A PROGRAM FOR IMPROVEMENT OF RELATIONS WITH PANAMA, ONE OF WHOSE POINTS PROVIDED FOR REDUCTION IN WATER RATE. SHORTLY THEREAFTER, GOP AGREED INFORMALLY TO PAY FUTURE BILLINGS ON A CURRENT BASIS, BUT NO AGREEMENT WAS REACHED ON PAYMENT OF AMOUNTS BILLED BUT NOT PAID FOR 1959 AND 1960 (\$787,727.13 AND \$898,620.66, RESPECTIVELY). IN EARLY 1963, AS PART OF AGREEMENT ON AID LOAN TO AUTONOMOUS GOP WATER AND SEWER AGENCY (IDAAN),

LATTER AGREED TO PAY PCC/CZG BILLINGS FOR WATER CURRENTLY BEING SUPPLIED TO REPUBLIC, BUT NO PROVISION WAS MADE FOR AMOUNTS BILLED BUT NOT PAID PRIOR TO 1962 AS THESE WERE NOT CONSIDERED AN OBLIGATION OF IDAAN. BY DIPLOMATIC NOTE OF NOVEMBER 25, 1964, GOP PROPOSED TO SETTLE OUTSTANDING AMOUNTS BY PAYMENT IN GOP BONDS BEARING ONE PERCENT INTEREST (SEE DEPARTMENT'S AIRGRAM A-75, 3/9/65, AND PREVIOUS) BUT THIS PROPOSAL WAS NOT ACCEPTABLE TO THE US. THERE HAVE BEEN OTHER DISCUSSIONS OF THESE AMOUNTS SINCE, BUT THEY HAVE NEVER BEEN PAID. BY EMBASSY'S READING, GOP OFFER TO SETTLE LIMITED OFFICIAL USE

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MATTER THROUGH AN AGREED FORM OF PAYMENT, EVEN THOUGH THIS WAS NOT ACCEPTABLE TO US AND SETTLEMENT WAS THUS NEVER CONSUMMATED, SUFFICES TO CONFIRM STATUS OF THESE AMOUNTS AS BAD DEBTS, RATHER THAN CLAIMS AGAINST GOP. WE DEFER TO LEGAL ADVISER FOR DEFINITIVE RULING ON CORRECTNESS OF THIS INTERPRETATION.

B. COSTS FOR PALO SECO HOSPITAL: SINCE CANAL CONSTRUCTION DAYS, USG HAS OPERATED PALO SECO HOSPITAL TO PROVIDE CARE FOR VICTIMS OF HANSEN'S DISEASE. UNDER AGREEMENT WITH PANAMA DATING FROM THAT TIME, AND MODIFIED THEREAFTER, PATIENTS FROM THE REPUBLIC WERE ADMITTED TO PALO SECO ON CONDITION THAT GOP REIMBURSE PCC/CZG FOR COSTS OF THEIR TREATMENT. GOP CEASED PAYING THESE COSTS AT TIME OF POLITICAL DIFFICULTIES IN 1959, REFERRED TO ABOVE. ALTHOUGH BILLED FOR COSTS OF PATIENTS FROM REPUBLIC SINCE THAT TIME, GOP HAS PAID THESE ONLY ONCE, IN 1961; COSTS APPLICABLE TO OTHER YEARS FROM 1959-1976 THROUGH MARCH HAVE NOT BEEN PAID AND CURRENTLY AGGREGATE TO AMOUNT OF \$4,173,133.59. GOP COMPTROLLER GENERAL'S OFFICE IS PROVIDED BY PCC/CZG WITH MONTHLY STATEMENT OF OUTSTANDING ACCOUNTS RECEIVABLE FROM GOP, INCLUDING THESE AMOUNTS. COPY OF THIS REPORT IS TRANSMITTED PERIODICALLY TO FOREIGN MINISTRY BY EMBASSY UNDER DIPLOMATIC NOTE. ALTHOUGH THERE HAS BEEN GOVERNMENTAL DISCUSSION OF STATUS OF PALO SECO HOSPITAL AND FUTURE OF PATIENTS STILL RESIDENT THERE, OUR FILES DISCLOSE NO EVIDENCE THAT GOP HAS EVER EXPLICITLY DENIED ITS OBLIGATION TO PAY THESE COSTS. OUR INTERPRETATION IS THAT SINCE GOP HAS PAID PALO SECO COSTS BILLED FOR ONE YEAR SINCE 1959 (IN 1961), AND HAS NEVER EXPLICITLY RESPONDED TO PCC/CZG BILLING OR EMBASSY NOTES WITH DENIAL OF OBLIGATION TO PAY, THESE AMOUNTS MAY ALSO PROPERLY BE REGARDED AS BAD DEBTS RATHER THAN AS CLAIMS AGAINST GOP. EMBASSY DEFERS TO LEGAL ADVISER FOR DEFINITIVE OPINION ON CORRECTNESS OF THIS INTERPRETATION.

3. ASDIE FROM FOREGOING MATTERS, CHECK WITHIN EMBASSY AND WITH OTHER USG AGENCIES OPERATING IN REPUBLIC OR

CANAL ZONE HAS DISCLOSED NO KNOWLEDGE OF ANY PRESENT
OR POTENTIAL SIGNIFICANT CLAIMS BY USG AGAINST GOP.

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4. IN EVENT LEGAL ADVISER CONSIDERS THAT ANY OF THE ITEMS
DISCUSSED PARAS 1-2 ABOVE SHOULD BE CONSIDERED AS
"CLAIMS" RATHER THAN "DEBTS" IN CONTEXT REFAIRGRAM,
EMBASSY WOULD APPRECIATE BEING INFORMED OF THIS FACT AND,
FOR OUR OWN BACKGROUND, OF BASIS ON WHICH THIS DETERMINATION
IS MADE.

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